

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-210836

DATE: October 25, 1983

MATTER OF: ROLM Corporation

DIGEST:

1. Protest against noncompetitive award presents significant issue and warrants consideration under GAO Bid Protest Procedures, 4 C.F.R. § 21.2(c) (1983), where record indicates apparent impropriety in agency's sole-source award.
2. Agency justification for sole-source award for additional telephone capability on basis that additional telephone capability was urgently needed and that compatibility problems between new and old equipment could arise if a new vendor were awarded the contract is inadequate in the absence of a required timeframe for the need and evidence that there was only one source.

ROLM Corporation (ROLM) protests two noncompetitive orders placed by the Department of the Navy (Navy) with the Pacific Telephone and Telegraph Company. The contracts are for a 5-year term and are for the expansion and improvement of the administrative telephone facilities at the Naval Supply Center, Oakland, California, and the Naval Regional Medical Center, Oakland, California. ROLM contends that the sole-source awards were improper and that a competitive procurement should be held.

We sustain the protest.

Initially, the Navy contends that ROLM's protest is untimely. The Navy indicates that the contract authorization for the Regional Medical Center was executed on September 25, 1981, and for the Naval Supply Center, the authorization was executed on January 15, 1982. ROLM's letter of protest was not received in our Office until February 18, 1982, and the Navy contends that ROLM should have known the basis for its protest far sooner.

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ROLM indicates that it first learned of the Navy's actions on February 9, 1983, and its protest was filed within 10 days after that date. ROLM states that the procurements were not public nor was there any kind of notice given to potential suppliers that the Navy was interested in procuring these services. ROLM contends that it had no knowledge and could not have obtained knowledge of these procurements at an earlier date.

Our review of the record indicates that there is nothing which disputes ROLM's statement that it learned of these procurements for the first time on February 9, 1983. In any event, we will consider the protest under the significant issue exception in our timeliness rules, 4 C.F.R. § 21.2(c) (1983), since, as indicated below, the record demonstrates an apparent impropriety in the Navy's sole-source award. See Aqualine Environmental Services, Incorporated, 59 Comp. Gen. 378 (1980), 80-1 CPD 260.

The Navy justifies the noncompetitive awards to Pacific Telephone on two grounds. First, the Navy contends that the improvements at both facilities were urgently needed and that time did not permit a competitive procurement. The Navy indicates that both the Naval Supply Center and the Naval Regional Medical Center are strategic facilities which were in urgent need of additional telephone capability. The Navy estimates that formal advertising would have delayed the procurement by 12-18 months and, as a consequence, the Navy contends that award on a sole-source basis was acceptable. Second, the Navy argues that since Pacific Telephone owns or maintains all of the existing telephone equipment at the two facilities, compatibility problems would arise between new and existing equipment if a new vendor were awarded the contract.

ROLM argues that the Navy's attempt to establish that the procurements were urgent is misleading. ROLM contends that the awards to Pacific Telephone represent long term commitments to new telephone systems rather than the upgrading of existing equipment pending a competitive procurement. ROLM asserts that the Navy must have known at a much earlier date that its telephone facilities were inadequate and should have provided for a competitive procurement at that time. ROLM points to the fact that a substantial period of time has elapsed between the award to Pacific Telephone and the installation of the new system and argues that the Navy could have conducted a competitive

procurement within that time period. Finally, ROLM states that it is the largest supplier of telephone equipment of this type to hospitals in the country and contends that the equipment it offers is fully compatible with the equipment on hand at both the Naval Supply Center and the Naval Regional Medical Center. ROLM indicates that telephone equipment is required to be built to government mandated specifications and that the equipment offered by ROLM was fully compatible with local Bell System equipment.

As a general matter, government procurements must be conducted on a competitive basis to the maximum extent practicable. This requirement applies to contract extensions and renewals. See Federal Data Corporation, 59 Comp. Gen. 283 (1980), 80-1 CPD 167. We have held, however, that sole-source acquisitions may be authorized where (1) the procuring agency's minimum needs can be met only by items or services that are unique, (2) time is of the essence and only one known source can meet the agency's needs within the required timeframe, (3) a sole-source award is necessary to insure compatibility between the procured item and existing equipment, or (4) an award to other than the proposed sole-source contract would pose unacceptable technical risks. Cerberonics, B-205063, April 14, 1982, 82-1 CPD 345.

Because competitive procurements are preferred, our Office will scrutinize closely a sole-source determination. Kent Watkins and Associates, Inc., B-191078, May 17, 1978, 78-1 CPD 377. The standard we apply in determining the propriety of a sole-source award is one of reasonableness, i.e., unless it can be shown that the contracting agency acted without a reasonable basis, our Office will not question the decision to procure on a sole-source basis. Federal Data Corporation, supra.

In the present case, we find that the record does not adequately justify a noncompetitive award to Pacific Telephone for 5 years. The Navy indicates that a competitive procurement was considered. However, due to the urgent need for the additional equipment and potential compatibility problems with existing equipment, it decided to award the contract to the company presently serving those facilities, Pacific Telephone. The Navy's decision to sole-source the contract due to the urgent need for additional telephone capability is an unacceptable

justification in the absence of a required timeframe and evidence that there was only one source. Electronics Systems U.S.A., Inc., B-200947, April 22, 1981, 81-1 CPD 309; Las Vegas Communications, Inc., B-195966, July 22, 1980, 80-2 CPD 57. ROLM asserts that it could ship equipment such as that required here in 90-120 days, with installation requiring an additional month. We note that the Navy had no required timeframe for the installation of the equipment and that, if time restraints precluded the conduct of a regular competition, the Navy could have conducted an expedited negotiated procurement.

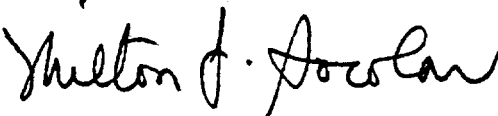
Furthermore, the record shows that the Navy made no attempt to ascertain whether alternative sources could meet its needs. The sole-source justification makes no statement with respect to Pacific Telephone being the only known source and there is no indication of any effort to publicize the requirement in the Commerce Business Daily or otherwise or to consider ROLM or other possible commercial sources. Although the Navy indicates that there will be compatibility problems in a multivendor situation, the Navy has not convincingly shown that other firms could not fulfill its needs. See ROLM Corporation and Fisk Telephone Systems, Inc., B-202031, August 26, 1981, 81-2 CPD 180.

Finally, we note that the record does not address the question of why a noncompetitive award for 5 years was necessary. With respect to the Naval Regional Medical Center, the final business clearance memorandum indicates that the additional telephone capacity, which would be adequate for the foreseeable future, could be installed within 32 weeks after award of the contract. There is nothing in the record which indicates that only a 5-year contract was feasible or necessary. As a consequence, even if we had found the initial sole source to be proper, we fail to see why a contract of shorter duration was not awarded and a competitive procurement begun. See ROLM Intermountain Corporation, supra.

Under the circumstances, we find that the sole-source award was not justified. We believe that protection of the integrity of the competitive procurement process requires that other companies be afforded an opportunity to compete for this requirement. Accordingly, we recommend that the Navy's requirements be reprocured on a competitive basis and that, if an offer from a company other than Pacific

Telephone is evaluated as more advantageous to the government, the lease of Pacific Telephone equipment be discontinued.

This decision contains a recommendation for corrective action to be taken. Therefore, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720, as adopted by P.L. 97-258, which requires the submission of written statements by the agency to the Committees concerning the action taken regarding our recommendation.

for 
Comptroller General
of the United States